

WRITTEN TESTIMONY, RE: HB 4314
HOUSE OVERSIGHT COMMITTEE
Michael E. Fisher, Assistant City Attorney, City of Livonia, Michigan
May 21, 2013

I am sorry I am unable to appear before the Committee today, and hope that there will be further hearings on this proposal at which I may offer input. Whether or not such hearings occur, please consider these issues:

- 1) It is unclear to me what problem this proposal is intended to solve, but it appears to be built around dissatisfaction with Freedom of Information Act responses of state agencies and their representatives. I say this because the Commission is selected by state officials, in conjunction with statewide media organizations, and will presumably sit in Lansing. It would potentially be a serious burden for representatives of local communities – which may be far distant from Lansing – to have to appear before such a body, but it is logical (indeed, probably more convenient) for state agencies to appear at hearings in Lansing.
- 2) There is much to admire in the proposed scheme for appointing members to this Commission: it would assure bipartisan representation, as well as representation of both the Governor and the Legislature. It would also allow for considerable media input into FOIA issues. But I am concerned by the absence of local representation (see above) and – even more seriously – there is nothing to suggest that any member of the Commission would have any experience in responding to FOIA requests. To offer fair and practical determinations and advice, such a Commission should at least have equal representation between FOIA requestors and FOIA responders.
- 3) In my experience, simple and inexpensive solutions are generally better than complex, exotic, and expensive ones. This legislation would create – perhaps unintentionally – a new bureaucracy which appears redundant in view of existing FOIA provisions for internal and judicial appeals of FOIA responses. It imposes a state solution to local problems. And there would be an unfunded mandate, to the extent this proposal is applied to local governments, in compelling local units to answer to this Commission as well as the courts.

Thus, if this Commission is determined to be necessary, its ambit should be limited to state agency FOIA responses, and the membership selection process should be revised to assure that FOIA responders have at least equal representation with FOIA requestors. Also – no doubt coincidentally – the options for action by the Commission in subsection 13 all appear to presume that the Commission will never find that the FOIA responder(s) acted appropriately. I assume this was not by design, and can be cured by giving the Commission one or more other options.

Finally, before proceeding with adoption of this bill, I would urge the Legislature to review the existing Section 10(1)(a) of FOIA, which provides for a quick internal appeal of any FOIA response deemed unsatisfactory by a requester. In many communities, this appeal is the first time a municipal attorney will have the chance to review the FOIA response, and he/she may well remedy any defects in the original response, or suggest other ways in which the requestor can reasonably obtain the requested material. This process, unlike the proposed Commission, is time-sensitive, inexpensive, and local. Please consider making this appeal process a prerequisite to filing either a FOIA action in the courts or a complaint before the Commission contemplated in this bill.

Thank you.